

LOCAL AGENCY FORMATION COMMISSION COUNTY OF SAN BERNARDINO

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DATE: APRIL 8, 2003

FROM: KATHLEEN ROLLINGS-McDONALD, Acting Executive Officer

TO: LOCAL AGENCY FORMATION COMMISSION

SUBJECT: **AGENDA ITEM 3** – REQUEST FOR RECONSIDERATION RELATED TO
THE DONUT HOLE WATER AND SEWER SERVICE (See full title below)

FULL TITLE:

Request for Reconsideration Submitted by The Redlands Association of the
Commission's Confirmation of Exemption from Government Code Section
56133 for Water and Sewer Service from the City of Redlands in the Donut Hole

RECOMMENDATION:

Deny the Request for Reconsideration submitted by The Redlands Association.

BACKGROUND:

State law provides a procedure whereby any affected agency or interested person may request reconsideration of a Commission resolution (Government Code Section 56895). The law provides that such a request must be submitted within 30 days of the adoption of the Commission's resolution making determinations; requires that it specify the specific modifications to the resolution being requested; and that it outline what new or different facts that could not have been presented previously are claimed to warrant the reconsideration. In addition, Commission policy (Policy #16) supplements these requirements by adding "Request for Reconsideration will be granted only when the petitioner can present some compelling new evidence, or show that significant factors relative to the situation were overlooked or have changed."

On February 14, 2003, The Redlands Association submitted to the Commission a request for reconsideration of the Commission's confirmation of the exemption from the provisions of Government Code Section 56133 for the delivery of water and sewer

service to the Donut Hole by the City of Redlands. The matter was originally scheduled for consideration at the March 19th hearing, and was continued to the April hearing to allow for submission of additional information.

Provided below is a summary of the issues for reconsideration raised by The Redlands Association's letters dated February 14, 2003 and April 3, 2003 (copies included as Attachment #2), along with the staff responses related to each of those issues. The Commission will need to consider these issues and responses, and determine whether the request presents "new or different facts" and presents "compelling new evidence" in conformance with adopted Commission policies and State law to warrant reconsideration.

ISSUES FOR RECONSIDERATION:

1. *"New facts confirm that no utility services were provided to the Donut Hole by Redlands prior to 2001."*

Staff Response: The request for reconsideration asserts that the formation of Community Facilities District No. 2003-1 (Citrus Plaza) (CFD No. 2003-1) approved by the County Board of Supervisors on February 4, 2003 "makes clear that no utility service was provided to the undeveloped Donut Hole area by the City of Redlands prior to October of 2002". For clarification, the staff wants to outline specifically the area to which the Commission's exemption from the provision of Government Code Section 56133 applies. The "Donut Hole", as used in Resolution No. 2765, encompasses approximately 1,104 acres and is bounded by the City of Redlands' boundaries on all sides, generally defined as north of Lugonia Avenue, east of California Street, southerly of parcel lines, and westerly of the existing City boundaries in general located along the eastern right-of-way of Interstate 210/Route 30. A map of the area is included as Attachment #3 to this report. The Citrus Plaza Project, totaling 124 acres, is a part of the Donut Hole, but not its total area.

The County of San Bernardino has provided an outline of CFD No. 2003-1 (Attachment #6) -- noting that the purpose of the CFD is to provide long-term financing of public improvements for the Citrus Plaza development. These public improvements include, among other things, public road improvements, traffic mitigation improvements, water and sewer facilities fees, and storm drain improvements. The letter from Mr. Rex Hinesley, office of County Counsel, and the e-mail response from Mr. Emil Marzullo, Director of Special Districts, outlines their response to this portion of The Redlands Association request.

One of the problems with Government Code Section 56133 is the ambiguities of its language. These concerns have been discussed at length in the original staff report on

the issue (copy included as Attachment 1), as well as at the hearing on January 15, 2003. The staff would add to these previous discussions that no where within the language of Government Code Section 56133(e) outlining the exemptions does it require that the “previously extended service” be adequate for the anticipated or future land uses of the area. The exemption applies if the Commission believes that service was previously extended, the manner and extent not defined.

In adopting its Resolution No. 2765, the Commission made this finding:

- “(1) The Commission finds that the City of Redlands has provided water and sewer services in the “Donut Hole” area for decades and such services are readily available throughout the area.”

The staff’s research indicates that the City of Redlands provided sewer and water service to the Donut Hole prior to January 1, 2001. Examples of such would include the Calvary Chapel Church and school facility; the business along the north side of San Bernardino Avenue, the closed Kimura’s Nursery along Alabama Street, and several grove homes which have historically received services from the City of Redlands. The provision of these services by the City of Redlands is shown on maps included in the file as provided by the City of Redlands in support of its original exemption request. Moreover, the maps provided by the City of Redlands disclose that the City has previously installed the main water and sewer service lines in the Donut Hole area. In addition, the County has explained that the CFD, as it relates to water and sewer improvements, was created to refund the Citrus Plaza project for certain costs incurred in making lateral connections to pre-existing sewer and water service lines. They have emphasized that they believe the City of Redlands did provide sewer and water services to the Donut Hole prior to January 1, 2001. Accordingly, it is staff’s position that although the existence of the CFD is new information that could not have been presented to the Commission, it does not tend to demonstrate that the City of Redlands did not provide sewer or water service to the Donut Hole prior to January 1, 2001; and, therefore, substantial evidence in the record supports the Commission’s resolution.

2. *“Legal Considerations” -- The request for reconsideration asserts that “In the present case, no agreement or contract for utility services has been entered into by the City of Redlands, so any informal approval that might otherwise be available to the City under Section 56133(a) is not applicable.”*

Staff Response: As outlined in Resolution No. 2765, the Commission staff became aware that the City of Redlands had issued an “encroachment permit” to allow connections to the water and sewer lines already existing in the Donut Hole and began discussions with City staff regarding the issue. The staff scheduled the consideration before the Commission at the January 15, 2003 hearing to apprise it of these

discussions, explain its belief that such service was exempt from Section 56133, and to seek Commission concurrence with the staff's conclusion that the provision of such services to the Donut Hole was exempt.

If the party requesting reconsideration is correct, then no Commission action would be necessary in any event because under Section 56133(a) Commission approval is only required for "new or extended services by contract or agreement outside its jurisdictional boundaries." That being the case, an argument can be made that any new or extended service provided by an agency outside its jurisdictional boundaries by means other than contract or agreement is exempt from Government Code Section 56133, as the Commission already concluded. Such a reading, however, seems too hyper-technical and inconsistent with the purposes of Government Code Section 56133. Accordingly, in an abundance of caution, it was appropriate for the Commission to consider whether and to what extent Redlands extra-territorial provision of sewer and water service would otherwise fall within the provision of Government Code Section 56133.

Finally, it is worth noting that the exemption language within Government Code Section 56133(e) states "*This section does not apply to an extended service that a city or district was providing on or before January 1, 2001.*" This specific exemption section makes no reference to the requirement of a contract or any other instrument for service delivery. The determination is whether service was provided prior to January 1, 2001 date.

3. *"In fact, LAFCO staff has previously made that determination in writing. By memorandum dated September 29, 2000, LAFCO's assistant executive officer stated: "...If the proposal meets the criteria identified in Government Code Section 56429 and the area is removed from the sphere, the City of Redlands will be unable to extend its municipal services within the area by contract with the property owners under the restrictions of Government Code Section 56133."*

Staff Response: In making this response, staff did not consider the application of the subsection (e) exemptions. The staff would respond that if a contract for service were to be submitted for Commission review, the restriction of Government Code Section 56133(b) would preclude the Commission from granting its approval. That section reads "*(b) The commission may authorize a city or district to provide new or extended services outside its jurisdictional boundaries but within its sphere of influence in anticipation of a later change of organization.*"

However, that is not what has been asked by the City of Redlands or what has been determined by the Commission. The City of Redlands has submitted, and the

Commission has concurred, that water and sewer service was provided prior to the January, 2001, date indicated in the information as the “grandfather” date and, therefore, is exempt from Commission consideration.

4. *Supplemental Information submitted April 3, 2003 – “LAFCO, the City of Redlands, and Majestic Confuse the Existence of Infrastructure with the Provision of Service.”*
5. *“LAFCO, the City of Redlands, and the Redlands Joint Venture have all previously agreed that LAFCO’s approval is required to extend utility service to Citrus Plaza.”*

Staff Response: Staff disagrees. Evidence presented to the staff demonstrates that the City of Redlands provided both water and sewer services to the Donut Hole prior to January 1, 2001. One element of this evidence is the existence of the necessary infrastructure to provide that service. Other elements include water and sewer billings to properties in the Donut Hole. Nothing within the previous consideration, or Resolution No. 2765, specifically indicates that the exemption is appropriate on the basis of service to the Citrus Plaza Project.

In addition, the 1995 service contract referenced in the supplement, LAFCO SC#20, was submitted by the City of Redlands on behalf of the property owner, Majestic Realty. This contract was withdrawn by the City following the withdrawal of the application by the property owners to annex the Citrus Plaza Project to the City of Redlands (LAFCO 2789). This contract preceded changes in the law, such as AB 1544 (effective January 14, 2000), which provided a petition mechanism to mandate a sphere of influence change. The Commission is all too familiar with the number of issues related to the Donut Hole that have changed since 1995; lawsuits have come and gone, and numerous service delivery options that have been explored and rejected, so staff does not believe that the information in that application, dated in November of 1995, is compelling new evidence at this time.

RESPONSE FROM OTHER AGENICES:

The staff has requested that responses to the Request for Reconsideration be provided by the various parties interested in this consideration or named in The Redlands Association materials. Those agencies are the City of Redlands, the United Donut Hole Owners Property Association, Redlands Joint Venture, and the County of San Bernardino. Written responses have been provided by each in support of the Commission’s original determination to confirm the exemption for water and sewer services. Copies of these responses are attached to the staff report (Attachments #4 through #6).

As noted above, included in the information is an outline of Community Facilities District No. 2003-1 (Citrus Plaza), as created by the County of San Bernardino, to provide the Commission with a greater understanding of this new agency in the mix for the Donut Hole. It remains the staff's position that the creation of this agency to provide funding to reimburse a property owner for lateral connections for an increased level of the services already provided within the area does not affect the Commission's previous confirmation of exemption.

CONCLUSION:

At the risk of understatement, the staff suggests that the Donut Hole is a unique area, and as such, it requires that the Commission be very clear in its findings and determinations. The staff position is that the applicant for reconsideration has not shown that new evidence or important information relative to the specific consideration and resolution adoption were either overlooked or have changed. On that basis, in the staff view, Commission policy and state law would suggest that this request for reconsideration should not be granted. Therefore, the staff's recommendation is that the Commission deny the request.

/KRM

Attachments:

1. Staff report from January 15, 2003 hearing
2. Request for Reconsideration from The Redlands Association dated February 14, 2003 and supplemental information in letter dated April 3, 2003
3. Vicinity and Location Maps of the Donut Hole
4. Response from the City of Redlands provided by letter dated March 31, 2003
5. Response from United Donut Hole Owners Property Association and Redlands Joint Venture dated April 1, 2003
6. Response from the County of San Bernardino provided by letter dated April 4, 2003 and e-mail response of the same date